FILE COPY

FILED
JAN 16 1934
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 656

WILBUR F. BOOTH

vs.

THE UNITED STATES.

No. 657

CHARLES F. AMIDON

vs.

THE UNITED STATES.

PLAINTIFFS' MEMORANDUM.

Extracts from Parliamentary Debates in the House of Lords, Thursday, July 27, 1933, and Thursday, November 23, 1933. (Official Reports, Vol. 88, No. 79; Vol. 90, No. 3.)

Upon the question propounded to the Lord Chancellor regarding the effect of the National Economy Act, 1931,

on the salaries of the Judges of His Majesty's Supreme Court of Judicature the following discussion occurred in the House of Lords in which the private memorandum of the Judges was submitted:

"JUDGES' SALARIES.

"LORD HANWORTH: My Lords, I beg to ask the Lord Chancellor the question on the Paper which stands in my name—namely, whether the attention of the Lord Chancellor has been drawn to the statements which have recently appeared in the Press with regard to the attitude of the Judges towards the reduction of their salaries under the National Economy Act, 1931, and whether he can make any statement on the subject. I should like to add to that that I have put this Question down and ask it with the authority and approval of the Lord Chief Justice of England, Lord Hewart, who joins with me in a desire to obtain the information.

"The LORD CHANCELLOR (VISCOUNT SANKEY): My Lords, I am obliged to the noble and learned Lord for putting down this Question and so giving me an opportunity of dealing with the matter. In view of the statements which have publicly appeared as to the position of the Judges in regard to the questions which arise by reason of the National Economy Act, 1931, I propose, with the approval of the Prime Minister and of the Judges, to make public a Memorandum which the Judges themselves prepared and place before the Prime Minister on December 4, 1931. That Memorandum states their collective attitude on the subject, an attitude from which they have never departed.

"The Memorandum, which is marked 'Private,' is in the following terms:

Royal Courts of Justice,
London, W. C. 2.

MEMORANDUM.

"'The Judges of His Majesty's Supreme Court of Judicature think it their duty to submit certain considerations in regard to the recent reductions of the salary payable to Judges which seem to have escaped notice.

"'It is we think beyond question that the Judges are not in the position occupied by civil servants. They are appointed to hold particular offices of dignity and exceptional importance. They occupy a vital place in the Constitution of this country. They stand equally between the Crown and the Executive, and between the Executive and the subject. They have to discharge the gravest and most responsible duties. It has for over two centuries been considered essential that their security and independence should be maintained inviolate.

"'The Act of Settlement made clear provision for this in the following terms: "That after the said limitation shall take effect as aforesaid, Judges' commissions be made *quamdiu se bene gesserint,* and their salaries ascertained and established: but upon the Address of both Houses of Parliament, it may be lawful to remove them." (12 and 13 Will. III, Cap. 2.) Further by Section 12 of the Act of 2 and 3 William IV, Cap. 116, Judges were exempted from taxes.

"'It was long ago said that there can be no true liberty in a country where the Judges are not entirely independent of the Government; and the soundness of the remark has never been questioned. Article III of the Constitution of the United States runs as follows:— "The judicial power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the Supreme and inferior Courts, shall hold their offices during good behaviour, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office."

"'In this matter our country has set an example to the world, and we believe that the respect felt by the people for an English Judge has been partly due to his unique position, a feeling which will survive with difficulty if his salary can be reduced as if he were an ordinary salaried servant of the Crown.

"'It was owing to the general acceptance of these views that on the one hand the salaries of High Court Judges have never been the subject of a House of Commons Vote, but have been charged on the Consolidated Fund, and that on the other hand the Judges hold their office as expressed above during good behaviour and are removable only on an Address to the Crown by both Houses of Parliament.

"'If the salaries of the Judges can be reduced almost *sub silentio* by the methods recently employed, the independence of the Judicature is seriously impaired. It cannot be wise to expose Judges of the High Court to the suggestion, however malevolent and ill-founded, that if their decisions are favourable to the Crown in revenue and other cases, their salaries may be raised and if unfavourable may be diminished.

"'We must express our deep regret that no opportunity was given to the Judges of offering a voluntary reduction of salaries for an appropriate period; but we recognise that the Government was in a grave difficulty and that the time for consideration was very short.

"'We may add a single illustration of the peculiarity of the position of Judges in our Constitution. It is so to be found in the circumstance that if the point, already raised, were pressed that the National Economy Act, 1931, and the Order-in-Council dated the 1st October, 1931, did not have the legal effect of reducing the salaries of the Judges, because they are not "persons in his Majesty's Service," there is no tribunal in the land before whom such a question could be determined.

"'As to the amount of the reduction in the salaries of the Judges we prefer in this Memorandum to make no comment on our own behalf.

"'We should, however, desire to make one remark. When we consider the long line of exceptionally distinguished and able men who have occupied the position which we now hold, we cannot avoid expressing a fear that if the salary and the prestige of a High Court Judge are to remain as at present, those who will succeed us will probably not, as in the past, be drawn from the leaders of the Bar. There is now so little attraction to them to accept a seat upon the Bench, that it will be impossible to induce leading members of the Bar to make the necessary sacrifice.

"'The consequences in our opinion will be far-reaching and detrimental to the true interests of the country.'

"LORD HANWORTH: My Lords, I beg to thank the Lord Chancellor for the statement that he has been good enough to make.

"VISCOUNT CECIL OF CHELWOOD: My Lords, I am glad to know that the Government are considering what action, if any, they shall take, in order to deal with this very serious constitutional question. I do not wish to press the matter now, but I feel profoundly the weighty words in the Memorandum, and also the importance, to almost everything we value most in this country, of preserving intact the independence of the Judicial Bench. I hope that the Government will be able to announce shortly the step which they propose to take, in order to remove any possible doubt in this matter."

On November 23, 1933, the question again arose for discussion upon the following motion of Viscount Buckmaster:

"Moved to resolve, That this House is of opinion that there cannot be any true liberty unless the Judges of the Supreme Court are entirely independent of the executive Government; and to attain that result they should not only be irremovable except by an Address from both Houses of Parliament, but their salaries should not be diminished during their continuance in office.—(*Viscount Buckmaster.*)

The debate upon this question and motion led to an interesting historical discussion of the salaries of the English Judges and the differences between the powers of Parliament under the unwritten Constitution of Great Britain and the power of the Congress under the Constitution of the United States.

In the course of the debate, the Marquess of Reading said, among other things:

> "I would only make this last observation: that we should be careful not to be drawn into action which cannot be of use, because of something which happened in that emergency which we trust will not happen again. Nothing that you can do in this House, nothing that can be done constitutionally in this country, can prevent Judges' salaries coming up for consideration by Parliament. We are in a totally different position from the United States. If this matter were being discussed in the United States, certainly with regard to Judges of the Supreme Court, the position would be different, because theirs is a written Constitution, and there are words in Article 3 of Section 1 of that Constitution which make it plain—at any rate sufficiently plain—that a Judge's 'compensation' as it is termed, cannot be reduced, and therefore in order to effect any reduction it would be necessary to have an Amendment of the Constitution. But our position is quite different.
>
> * * * * * * *
>
> You cannot protect a Constitution in which Parliament is omnipotent unless you take away the omnipotence of Parliament. If, of course, my noble friend had a dictatorship in mind, it would surprise me, but nothing you can do by way of statute is actually going to affect that if you assume that some Government hereafter is going to propose to Parliament, and with a majority carry, any measure such as I have indicated. All I can say with regard to it is that while I agree absolutely with everything that has been said as to the in-

dependence, and of course the continued independence, of the Judges and the maintenance of their position as pillars of liberty in this country, I must point out to your Lordships that what was done was done with open eyes and with a clear mind, at any rate after explanations as full as possible had been given in the circumstances, and after the fullest consideration had been given to it."

The foregoing extracts are submitted for the convenience of the Court in support of plaintiffs' brief.

WILLIAM D. MITCHELL,
JOHN S. FLANNERY,
Counsel for Plaintiffs.

CARL TAYLOR,
MARK STANLEY MATTHEWS,
Of Counsel.